

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JORDAN KAHN MUSIC COMPANY, LLC,
SCOTT SWIECKI A/K/A SCOTT
MICHAELS, JORDAN KAHN, AND
SCOTT MICHAELS ENTERTAINMENT
LLC,

Plaintiffs,

V.

DEAN "DENO" TAGLIOLI, EMERALD
CITY BAND, INC., AND EMERALD CITY
MANAGEMENT, LLC,

Defendants.

Civil Action No. 4:21-CV-00045
Judge Mazzant

VERDICT FORM

We, the Jury, find as follows:

SECTION ONE: INFRINGEMENT, UNFAIR COMPETITION, AND UNJUST ENRICHMENT

TRADEMARK INFRINGEMENT

Question 1:

Do you find, by a preponderance of the evidence, that any Defendant infringed an alleged JKMC trademark in a manner that creates, when viewed in its entirety, a likelihood of confusion among ordinary consumers as to the source, affiliation, sponsorship, or approval of JKMC's services?

Answer "Yes" or "No" for each alleged trademark listed below:

1. JORDAN KAHN BAND: NO
2. JORDAN KAHN MUSIC COMPANY: NO
3. JORDAN KAHN ORCHESTRA: NO
4. JORDAN KAHN: NO
5. CHINATOWN BAND: NO

6. WALTON STOUT BAND: NO

7. PROFESSOR D BAND: NO

If you answered "Yes" for any trademark, proceed to Question 1(a). If you answered "No," proceed to Question 2.

Question 1(a):

What sum of money, if any, do you find from a preponderance of the evidence would fairly and reasonably compensate JKMC for its actual damages that resulted from any Defendants' infringement?

Answer in dollars and cents: \$ 0

Proceed to Question 1(b).

Question 1(b):

Do you find by a preponderance of the evidence that any Defendant willfully infringed a JKMC Mark? You should provide an answer for those trademarks which you answered "Yes" in Question 1.

Answer "Yes" or "No" for each Mark listed below:

1. JORDAN KAHN BAND: NO

2. JORDAN KAHN MUSIC COMPANY: NO

3. JORDAN KAHN ORCHESTRA: NO

4. JORDAN KAHN: NO

5. CHINATOWN BAND: NO

6. WALTON STOUT BAND: NO

7. PROFESSOR D BAND: NO

Proceed to Question 1(c).

Question 1(c):

Do you find by a preponderance of the evidence that Defendants unjustly enriched themselves through Defendants' infringement conduct, if any?

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" to Question 1(c), then answer Question 1(d). If you answered "No," proceed to Question 1(e).

Question 1(d):

What sum of money, if paid now in cash, would fairly and reasonably compensate JKMC for profits earned by any Defendants' unjust enrichment?

Answer in dollars and cents: \$ Ø

If you did not award damages in either Question 1(a) or Question 1(d), answer Question 1(e). If you awarded any amount of damages in either Question 1(a) or Question 1(d), proceed to Question 2.

Question 1(e):

Do you find by a preponderance of the evidence that JKMC sustained injury from a technical infringement of a trademark such that JKMC may receive nominal damages?

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" to Question 1(e), then answer Question 1(f). If you answered "No," proceed to Question 2.

Question 1(f):

What sum of money, if paid now in cash, should be assessed against Defendants and awarded to JKMC as nominal damages for Defendants' technical infringement of a trademark?

Answer in dollars and cents: \$ Ø

Proceed to Question 2.

UNFAIR COMPETITION

Question 2:

Do you find by a preponderance of the evidence that any Defendant engaged in unfair competition by using one or more of the JKMC Marks in a manner that created, when viewed in its entirety, a likelihood of confusion among ordinary consumers as to the source, affiliation, sponsorship, or approval of JKMC's services? If you answered "Yes" as to any Mark in Question 1, you must answer "Yes" to Question 2.

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" to Question 2, then answer Question 2(a). If you answered "No," proceed to Section Two.

Question 2(a):

What sum of money, if paid now in cash, do you find from a preponderance of the evidence would fairly and reasonably compensate JKMC for its damages, if any, proximately caused by any Defendants' use of the JKMC Marks?

Answer in dollars and cents: \$ _____

Proceed to Question 2(b).

Question 2(b):

Do you find by a preponderance of the evidence that any Defendants' use of any JKMC Mark was willful?

Answer "Yes" or "No."

Answer: _____

Proceed to Question 2(c).

Question 2(c):

Do you find by a preponderance of the evidence that Defendants unjustly enriched themselves through Defendants' violation of the laws prohibiting unfair competition?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question 2(c), then answer Question 2(d). If you answered "No," proceed to Question 2(e).

Question 2(d):

What sum of money, if paid now in cash, would fairly and reasonably compensate JKMC for profits earned by any Defendants' violation of the laws prohibiting unfair competition?

Answer in dollars and cents: \$ _____

If you did not award damages in either Question 2(a) or Question 2(d), answer Question 2(e). If you awarded any amount of damages in either Question 2(a) or Question 2(d), proceed to Question 3.

Question 2(e):

Do you find by a preponderance of the evidence that JKMC sustained injury from a technical violation of the laws prohibiting unfair competition such that JKMC may receive nominal damages?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question 2(e), then answer Question 2(f). If you answered "No," proceed to Question 3.

Question 2(f):

What sum of money, if paid now in cash, should be assessed against Defendants and awarded to JKMC as nominal damages for Defendants' technical violation of the laws prohibiting unfair competition?

Answer in dollars and cents: \$ _____

Proceed to Question 3.

Question 3:

Do you find by clear and convincing evidence the harm caused by Defendants' violation of the laws prohibiting unfair competition resulted from malice?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question 3, then answer Question 3(a). If you answered "No," proceed to Section Two.

Question 3(a):

What sum of money, if paid now in cash, should be assessed against Defendants and awarded to JKMC as exemplary damages, if any, for Defendants' use of the JKMC Marks?

Answer in dollars and cents: \$ _____

Proceed to Section Two.

SECTION TWO: FRAUD

Question 4:

Do you find by a preponderance of the evidence Defendants committed fraud against Michaels?

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" to Question 4, then answer Question 4(a). If you answered "No," proceed to Section Three.

Question 4(a):

What sum of money, if paid now in cash, would fairly and reasonably compensate Michaels for profits earned by any Defendant resulting from the fraud, if any?

Answer in dollars and cents: \$_____

Proceed to Question 4(b).

Question 4(b):

Do you find by clear and convincing evidence the harm caused by Defendants' fraud against Michaels resulted from malice?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question 4(b), then answer Question 4(c). If you answered "No," proceed to Section Three.

Question 4(c):

What sum of money, if paid now in cash, should be assessed against Defendants and awarded to Michaels as exemplary damages for Defendants' fraud?

Answer in dollars and cents: \$ _____

Proceed to Section Three.

SECTION THREE: RICO

Question 5:

Do you find by a preponderance of the evidence JKMC and Kahn have proven the existence of an enterprise?

Answer "Yes" or "No."

Answer: yes

If you answered "Yes" to Question 5, then answer Question 5(a). If you answered "No," proceed to initial and date the Verdict Form.

Question 5(a):

Do you find by a preponderance of the evidence JKMC and Kahn have proven the enterprise engaged in, or had some effect on, interstate or foreign commerce?

Answer "Yes" or "No."

Answer: yes

If you answered "Yes" to Question 5(a), then answer Question 5(b). If you answered "No," proceed to initial and date the Verdict Form.

Question 5(b):

Do you find by a preponderance of the evidence JKMC and Kahn have proven the following persons or entities were employed by or associated with the alleged enterprise:

Taglioli

Answer "Yes" or "No."

Answer: Yes

Emerald City Management

Answer "Yes" or "No."

Answer: Yes

Emerald City Band

Answer "Yes" or "No."

Answer: Yes

If you answered "Yes" as to any Defendant, then answer Question 5(c). If you answered "No" as to all Defendants, proceed to initial and date the Verdict Form.

Question 5(c):

Do you find by a preponderance of the evidence JKMC and Kahn have proven the following persons or entities participated, either directly or indirectly, in the conduct of the affairs of the enterprise?

Taglioli

Answer "Yes" or "No."

Answer: Yes

Emerald City Management

Answer "Yes" or "No."

Answer: Yes

Emerald City Band

Answer "Yes" or "No."

Answer: Yes

If you answered "Yes" as to any Defendant, then answer Question 5(d). If you answered "No" as to all Defendants, proceed to initial and date the Verdict Form.

Question 5(d):

Do you find by a preponderance of the evidence JKMC and Kahn have proven the following persons or entities participated through a pattern of racketeering activity?

Taglioli

Answer "Yes" or "No."

Answer: NO

Emerald City Management

Answer "Yes" or "No."

Answer: NO

Emerald City Band

Answer "Yes" or "No."

Answer: NO

If you answered "Yes" as to any Defendant, then answer Question 5(e). If you answered "No" as to all Defendants, proceed to initial and date the Verdict Form.

Question 5(e):

Do you find by a preponderance of the evidence that JKMC and Kahn have proven the following persons or entities participated in a pattern of racketeering activity through acts in violation of Title 18, United States Code, Section 1028(a)(7), which prohibits federal identification fraud?

Taglioli

Answer "Yes" or "No."

Answer: _____

Emerald City Management

Answer "Yes" or "No."

Answer: _____

Emerald City Band

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" as to any Defendant, then answer Question 5(f). If you answered "No" as to all Defendants, proceed to Question 5(g).

Question 5(f):

What are JKMC and Kahn's damages, if any, for the violations found in Question 5(e)? The amount of damages to Plaintiffs' business or property, if any, should be the amount specifically and proximately caused by and attributable to Defendants' violation of the predicate act found in 5(e). Do not include in this amount damages, if any, that flow from Plaintiffs' other claims.

Answer in dollars and cents: \$ _____

Proceed to Question 5(g).

Question 5(g):

Do you find by a preponderance of the evidence that JKMC and Kahn have proven the proven the following persons or entities participated in a pattern of racketeering activity through acts in violation of Title 17, United States Code, Section 506, which prohibits criminal copyright infringement?

Taglioli

Answer "Yes" or "No."

Answer: _____

Emerald City Management

Answer "Yes" or "No."

Answer: _____

Emerald City Band

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" as to any Defendant, then answer Question 5(h). If you answered "No" as to all Defendants, proceed to Question 5(j).

Question 5(h):

What are JKMC and Kahn's damages, if any, for the violations found in Question 5(g)? The amount of damages to Plaintiffs' business or property, if any, should be the amount specifically and proximately caused by and attributable to Defendants' violation of the predicate act found in 5(g). Do not include in this amount damages, if any, that flow from Plaintiffs' other claims.

Answer in dollars and cents: \$ _____

Proceed to Question 5(j).

Question 5(j):

As a result of the wrongful conduct that occurred in the past, what amount of money, if any, should be disgorged from the Defendants to deter future wrongful conduct?

Answer in dollars and cents: \$ _____

If you did not award damages in Question 5(f), Question 5(h), or Question 5(j), answer Question 5(k). If you awarded any amount of damages in Question 5(f), Question 5(h), or Question 5(j), proceed to initial and date the Verdict Form.

Question 5(k):

Do you find by a preponderance of the evidence that JKMC and Kahn sustained a technical violation of their rights protected under RICO such that they may receive nominal damages?

Answer "Yes" or "No."

Answer: _____

If you answered "Yes" to Question 5(k), then answer Question 5(l). If you answered "No," proceed to initial and date the Verdict Form.

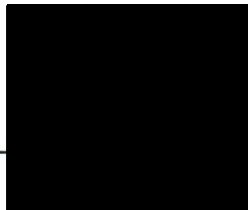
Question 5(l):

What sum of money, if paid now in cash, should be assessed against Defendants and awarded to JKMC and Kahn as nominal damages for Defendants' technical RICO violation?

Answer in dollars and cents: \$ _____

Proceed to have the Foreperson initial and date the Verdict Form.

FOREPERSON'S INITIALS: _____



DATE: _____

8/11/2022